

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD F. TULAK *et al.*,) Civil No. 11cv1677-L(WMC)
Plaintiff,) **ORDER DENYING DEFENDANTS'**
v.) **MOTION TO DISMISS AS MOOT**
BANK OF AMERICA, N.A. *et al.*,)
Defendants.)

)

On August 5, 2011 Defendants filed a motion to dismiss the complaint. On the same day, Plaintiff filed the first amended complaint. The amended complaint was timely filed pursuant to Federal Rule of Civil Procedure 15(a).

An amended complaint supersedes a prior complaint as a pleading. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff'd on other grounds*, *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). A district court may treat as moot a pending motion to dismiss a superseded pleading. *See* William W. Schwarzer *et al.*, Fed. Civ. Proc. Before Trial ¶ 9:262 (2011). Accordingly, Defendants' motion to dismiss is **DENIED WITHOUT PREJUDICE**.

It is further **ORDERED** that Defendants shall file a response to the amended complaint, if any, within the time provided in Rule 15(a)(3).

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The hearing on Defendants' motion to dismiss, currently set on this court's calendar for October 17, 2011, is **VACATED**.

IT IS SO ORDERED.

DATED: August 12, 2011

M. James Lorenz
M. James Lorenz
United States District Court Judge

COPY TO:

HON. WILLIAM McCURINE, Jr.
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL